**DATUK CHOO CHING HWA**

**v.**

**PUBLIC PROSECUTOR**

HIGH COURT MALAYA, TEMERLOH
LAMIN MOHD. YUNUS J
[CRIMINAL APPEAL NO. 42-8-89]
15 SEPTEMBER 1990

***CRIMINAL PROCEDURE:*** *Jurisdiction - Criminal proceedings - Duty of Subordinate Court - Transfer of case from Sessions Court to the High Court - Certificate from public prosecutor - Face of the charge - Section 418A Criminal Procedure Code.*

The appellant was charged under s. 409 of the Penal Code in the Sessions Court at Temerloh. By virtue of a certificate from the Public Prosecutor under s. 418A of the Criminal Procedure Code (CPC), the case was transferred to the High Court at Temerloh. The appellant appealed to the High Court on the ground that the Temerloh Sessions Court had no jurisdiction to try the accused and therefore would not have the jurisdiction to receive the certificate from the Public Prosecutor for the transfer of this case to the High Court.

**Held:**

**[1]** For the offence of criminal breach of trust, there is a specific provision as provided under s. 124(ii) of the Criminal Procedure Code.

**[2]** (a) In view of the wide powers of the Attorney-General given under s. 376 of the CPC, the Court has no power to look beyond the face of the charge in order to decide the issue of jurisdiction.

(b) The latest amendment to Article 145 of the Constitution as contained in Clause (3A) gives further powers to the Attorney-General wherein he is empowered to "require" any Subordinate Court to remove a case before which it is pending to the High Court as named in his certificate.

**[3]** The wording of the charge specifically implicates the Temerloh Branch of Malayan Banking Bhd. and at the same time states that is "in the District of Temerloh"; therefore the Temerloh Sessions Court has jurisdiction to try the case.

*[Appeal dismissed]*

**Cases referred to:**
*PP v. Nik Soh [1956] MLJ 96*

**Legislation referred to:**
Criminal Procedure Code, ss. 121, 122, 124, (ii), 125, 376, 418A
Federal Constitution, art. 145(3)

*For the appellant - Raja Aziz Addruse with Low Hop Bing; M/s. Low Hop Bing & Associates*
*For the respondent - Gooi Soon Seng, DPP; Jabatan Peguam Negara*

**JUDGMENT**

**Lamin Mohd. Yunus J:**

The accused is charged with the offence of Criminal Breach of Trust and the charge reads:

> That you on 1 July 1986 at the Temerloh Branch of the Malayan Banking Berhad, in the District of Temerloh, in the state of Pahang, being an agent of Syarikat Ubrang Sdn. Bhd., to wit, a director and in such capacity entrusted with dominion over certain property, to wit, sum of RM200,000, committed criminal breach of trust in respect of the said property, and that you have thereby committed an offence under s. 409 of the Penal Code.

The accused was first charged before the Sessions Court Temerloh on 14 July 1989 and on 17 July 1989 the case was transferred to the High Court Temerloh on a certificate from the Public Prosecutor under s. 418A of the Criminal Procedure Code. The accused appealed to the High Court on the said order of transfer and on 16 January 1990 I dismissed the appeal on the following grounds.

For the purpose of the appeal, learned Counsel for appellant submitted that the Temerloh Sessions Court had no jurisdiction to try the accused for the offence as charged as the proper venue for trial legally should be the Kuala Lumpur Sessions Court. As the Temerloh Sessions Court had no jurisdiction to try the accused, it therefore would not have the jurisdiction to receive the certificate from the public prosecutor for the transfer of this case to the High Court at Temerloh under s. 418A of the Criminal Procedure Code.

I agree that ordinarily the first question that I must decide is whether the Temerloh Sessions Court had jurisdiction to try the accused for the offence as charged before he could make the order of transferring or removing the case to this Court i.e. the High Court at Temerloh.

The whole Chapter XIV of the Criminal Procedure Code lays down a number of provisions by which the issue of jurisdiction may be decided. But for the purpose of the present case ss. 121, 122, 124 and 125 of the said Code may be of relevance for consideration because the main question that is in dispute is in regard to the area of jurisdiction that is to say whether the case is triable or may be tried by the Sessions Court at Temerloh or the Sessions Court at Kuala Lumpur. However for the offence of the Criminal Breach of Trust, there is a specific provision as provided under s. 124(ii) of the CPC which reads:

> The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received by the accused person, or the offence was committed.

There was so much argument before me even including as to where the account of the Syarikat Ubang Sdn. Berhad was being managed whether at a branch of the Malayan Banking berhad or at its headquarters in Kuala Lumpur. Such questions would necessitate my examination of the evidence. To decide the issue of jurisdiction, a Court is required to look only on the face of the charge. I am fortified by the words of Rigby 'J' in the case of *PP v. Nik Soh* [1956] MLJ 96 (though this case is really not in point) which read:

> The logical necessity for a Magistrate to decide the issue of jurisdiction on the face of the charge, and before entering into the evidence, is really obvious, and this case provides an admirable illustration for it.

In view of the wide powers of the Attorney-General given under s. 376 of the Criminal Procedure Code which after Merdeka operates under the umbrella of Article 145(3) of the Federal Constitution, I feel bound to draw the conclusion that a Court has no power to look

beyond the face of the charge in order to decide the issue of jurisdiction. The latest amendment to Article 145 as contained in Clause (3A) gives further powers to the Attorney-General if Parliament chooses to legislate which it has done as is provided in s. 418A of the CPC wherein he is empowered to "require" any subordinate Court to remove a case before which it is pending to the High Court as named in his certificate.

Therefore in a request for transfer or removal of a case by the public prosecutor exercising his powers under s. 418A of the Criminal Procedure Code, the only thing a subordinate Court (in the present case the Sessions Court at Temerloh) is required to do is to merely examine the charge and decide whether the wording of the charge is clear and carries no uncertainty. In the present case, I have no quarrel with the wording of the charge which in itself specifically implicates the Temerloh branch of the Malayan Banking Berhad and at the same time it makes mention that it is "in the District of Temerloh" the sum toto of which points to no other than the fact that the Temerloh Sessions Court has jurisdiction to try the case and accordingly upon being required by the Public Prosecutor to have the case transferred or removed to the High Court at Temerloh on the strength of his certificate the said Sessions Court will have to make the order forthwith as it is mandatory for it to do so.

Also found at [1990] 2 CLJ 987